IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 219 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
LEENABEN A SARABHAI - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard Mr. B.B. Nayak, learned counsel for the Revenue. None for the respondent-assessee though office report shows that the noticee is served.
2. Present Reference has been made by the Income-tax Appellate Tribunal, at the instance of the Revenue on the following questions:-

   [1] Whether on the facts and in the circumstances of the case the Tribunal was right in law in coming to the conclusion that the Income-tax Officer had no authority to reopen the assessment under section 147[b] of the Act?

   [2] Whether, on the facts and in the circumstances of the case, the Tribunal erred in not considering the fact whether the reassessment made by the ITO was justified under the provisions of section 263 of the Act?

   [3] Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of section 2[47] of the Act and

the provisions of section 52[2] were not required to be considered in determining the appeal?”

3. Mr. Nayak, learned counsel for the Revenue submits that the Commissioner of Income-tax (Appeal), so also the Tribunal relied upon the earlier order passed by the Tribunal dated 12.10.79 in ITA No. 404/Ahd./78-79 for assessment year 1974-75 and held that once particular items were deleted from tax, then, same could not be included for purposes of taxation or for reopening assessment under section 147/b] of the Act. He submits that in ITA 404/Ahd./78-79, at the instance of the Revenue, a Reference was made which was registered as ITR No.351/80 and was ultimately decided in favour of the Revenue and the matter was remitted to the Tribunal for deciding the matter afresh. The said judgment of the High Court is reported in [1988] 171 ITR 86. He submits that once the earlier order of the Tribunal on which everybody was placing reliance

was set aside by the High Court, then, very foundation to hold that the items were not includible or were not exigible would not be available to the assessee nor to the Tribunal to decide against the Revenue. In the matter of Smt. Leenaben A. Sarabhai[supra], the High Court had remitted the matter back to the Tribunal for disposal in accordance with law. Under the circumstances, we do not think that we should answer questions at this stage as we are of the view that the very foundation for deciding the matter is lost. Without answering the questions referred to us, we set aside the order passed by the Tribunal, remand the matter back to the Tribunal with a direction to decide the matter afresh in light of the decision of the earlier matter which was remanded earlier by this Court. Reference stands disposed of accordingly. There shall be no costs.

[R.S. GARG, J.]

[M.R. SHAH, J.]

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